

REMARKS

The Office Action of April 1, 2005, has been carefully considered.

Claims 19 through 21, 24 through 26, 28, 29, 33 and 36 through 39 have been rejected under 35 U.S.C. 102(b) as anticipated by Briggs et al, while Claims 27, 30 through 32 and 34 through 37 have been rejected under 35 U.S.C. 103(a) as obvious over Briggs et al.

Claims 19 and 29 have now been amended to recite that the gel of the inner phase of the invention has a viscosity greater than 2000 cPs. In accordance with this amendment, Claim 36 has been canceled, and Claim 37 has been amended to depend from Claim 29.

While Briggs et al does mention the presence of a gelling agent, Applicants have noted that it is not clear how many phases would actually be present in a Briggs et al composition and whether any of such phases would be in the form of a gel. The Office action states "[s]ince the Office does not have the facilities for examining and comparing applicants' product with the product of the prior art, the burden is on applicant to show novel and unobvious differences between the claimed product and the product of the prior art (i.e., that the multiple emulsion of the prior art does not possess the same material and functional characteristics of the claimed emulsion)." Applicants have now reproduced the examples given in the Briggs et al reference, using an experimental protocol and available products equivalent to those disclosed by Briggs et al. Attached hereto is a Declaration of Chantal Amalric under 37 CFR § 1.132 reporting on this testing.

The declaration reports on measurements of the viscosities of all of the aqueous phases H, I, J and K of the Briggs et al reference, as well as phase L which is an

alcoholic phase. Example IV is the only experimental example of Briggs et al containing a hydrophilic polymer, which is xanthan gum, suggested in the reference to be a gelling agent.

Results of the measurements are set forth in the table on page 4 of the declaration. It can be seen that the maximum viscosity of any phase or combination of phases was 200 cPs, far less than the 2000 cPs minimum of the claimed invention.

By way of comparison, the aqueous gels in the phases used in the examples of the present application have viscosities of 80,000 cPs (Example 1) and 70,000 cPs (Example 2), viscosities which are characteristic of gels in the art.

The Office action also states that in Example IV of the Briggs et al reference, phase L containing xanthan gum and propylene glycol would combine with deionized water of phase K to form an aqueous gel. However, as is pointed out in the declaration, Example IV of Briggs et al, phase K contains no water. Moreover, even when phase L is mixed with other aqueous phases, no viscosity approaching 2000 cPs was observed.

As was pointed out previously, Briggs et al discloses that phases K, L, M and N are added as a diluent, the use of the term diluent does not suggest a viscous material, but rather a non-viscous material.

Other examples of the Briggs et al reference, Examples I, II, III, V and VI, were also tested. (Example VII could not be reproduced because the azelaic acid needed for phase H was not available.) In every example tested, the observed viscosity was less than 50 cPs, with the exception of 140 cPs for phase J of Example V. As noted in the declaration, there is no reason to believe that in view of the amount of polyvinylpyrrolidone used in Example VII, there would be any greater viscosity in this phase either.

It was also pointed out in the Office action that Example III of Briggs utilizes aloe vera gel, which meets the limitation of "aqueous gel." However, despite its name, the viscosity of this material was found to be less than 50 cPs, and even in combination with other aqueous phases of Example III, no material with a viscosity approaching 2000 cPs was obtained.

Thus, based on experimental evidence, it can be stated that none of the examples of Briggs et al gives rise to an aqueous gel according to the presently claimed invention, a gel with a viscosity of at least 2000 cPs. There is further no reason to believe that Briggs et al discloses any emulsion having two internal aqueous phases in which one of the internal aqueous phases is a gel having a viscosity of 2000 cPs or more.

Accordingly, Applicants have now shown that the disclosure of Briggs et al does not meet the requirements of the claimed invention, and does not disclose a composition having two internal aqueous phases in which one of the aqueous phases has a viscosity of at least 2000 cPs. Indeed, the experimental evidence indicates that all of the internal aqueous phases of Briggs et al have much lower viscosities.

Withdrawal of these rejections is accordingly requested.

Claims 22 and 23 have been rejected under 35 U.S.C. 103(a) over Briggs et al in view of either Ansmann et al or Milius et al, cited to show the claimed emulsifiers. However, even if such emulsifiers were used, there is still no evidence that Briggs et al would obtain one internal aqueous phase in the form of a gel having a viscosity of at least 2000 cPs. Withdrawal of this rejection is requested.

New claim 40 recites a group of preferred gel-phase polymers, as disclosed in the specification at page 12, lines

2-5.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



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